

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEBERG, LISA STEIN, and AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER, ALEXBAY, LLC f/k/a LESTER EBER LLC, CANANDAIGUA NATIONAL BANK & TRUST COMPANY, ELLIOTT W. GUMAER, JR., EBER BROS. & CO., INC., EBER BROS. WINE AND LIQUOR CORPORATION, EBER BROS. WINE & LIQUOR METRO, INC., EBER-CONNECTICUT, LLC, and WENDY EBER,

Defendants.

USDC SDR
DOCUMENT
ELECTRONICALLY FILED
DOC #: 05/01/2018
DATE FILED:

**STIPULATION AND ORDER  
TO SUBSTITUTE PARTY AND  
ENLARGE TIME TO ANSWER**

Civil Action No.:  
16-CV-9517(LAK)(KHP)

**WHEREAS** plaintiffs commenced the above captioned action on December 9, 2016 in which they named Elliott W. Gumaer, Jr. as a defendant. Mr. Gumaer answered the complaint on July 21, 2017, and

**WHEREAS** on February 20, 2018, defendant Mr. Gumaer died and plaintiffs were provided with letters testamentary on April 13, 2018, and

**WHEREAS** on April 18, 2018, plaintiffs brought a motion to substitute the Estate of Elliott W. Gumaer, Jr. as defendant for Elliott W. Gumaer, Jr. in the above captioned action, and

**WHEREAS** plaintiffs have filed a second amended complaint dated April 16, 2018, and

**WHEREAS** the Estate of Elliott W. Gumaer, Jr. has engaged Calihan Law PLLC as counsel for the Estate as evidenced by the Declaration of Robert C. Calihan attached hereto as **Exhibit A**, it is hereby

**STIPULATED, AGREED and ORDERED** that the Estate of Elliott W. Gumaer, Jr. should be substituted as a defendant in the above captioned action and that the Estate shall have until May 18, 2018 to answer the second amended complaint.

Dated: April 30, 2018

R. C. Calihan

Robert C. Calihan, Esq.  
**CALIHAN LAW PLLC**  
*Attorneys for Defendant*  
*Estate of Elliott W. Gumaer, Jr.*  
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Dated: April 26, 2018

B.C.B.

Brian C. Brook (BB 1980)  
**CLINTON BROOK & PEED**  
*Attorneys for Plaintiffs*  
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New York, NY 10007  
Telephone: (212) 257-2334  
Email: Brian@ClintonBrook.com

Dated: 05/01/2018

**SO ORDERED:**

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Honorable Lewis A. Kaplan  
United States District Judge

Katherine H. Parker

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Honorable Katherine H. Parker  
United States Magistrate Judge

# Exhibit A



Rochester, New York • New York City  
www.CalihanLaw.com

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Office: Rochester, New York

April 13, 2018

Via Email and First Class Mail

Patrick D. Martin  
30B Grove Street  
Pittsford, New York 14534

Re: Estate of Elliot W. Gumaer:  
Daniel Kleeberg, Lisa Stein, and Audrey Hays v. Lester Eber, et al.  
Civil Action No. 1:16-cv-09517

Dear Patrick:

I write you as the co-executor of Mike Gumaer's estate ("Estate") in connection with Daniel Kleeberg, Lisa Stein, and Audrey Hays v. Lester Eber, et al. ("Action"). We are pleased that the Estate has chosen to retain the services of Calihan Law PLLC ("Firm"). Pursuant to Part 1215 of the Joint Rules of the Appellate Division, this letter will set forth the scope and terms of our professional relationship.

The Firm will represent the Estate in connection with Daniel Kleeberg, Lisa Stein, and Audrey Hays v. Lester Eber, et al., which is currently pending in the United States District Court for the Southern District of New York under Civil Action No. 1:16-cv-09517 (the "Action").

As agreed, our fee for these services is \$400 per hour for services performed by me; \$325 for services performed by attorneys with junior partner-level experience; \$250 per hour for services performed by associates; and \$150 per hour for services performed by our paralegals.

As a condition of our representation, the Estate has agreed to maintain an "evergreen retainer" in the amount of \$10,000. Our fees and costs will be deducted from the retainer as they are billed to you, which will generally occur monthly but may occur more frequently. The Estate agrees to replenish the retainer up to \$10,000 promptly upon any draw down on the retainer.

We will attempt to forward directly to you for direct payment by your third party charges for customary and usual expenses incurred on the Estate's behalf in the course of this representation, including but not limited to filing fees, travel, discovery costs (including deposition-related expenses), fax, transcripts, overnight delivery, messengers, computer legal

research, experts' fees and costs, court costs, and other related expenses. To the extent the Firm pays any of those costs and expenses, we will deduct them from the retainer, subject to the replenishment obligations set forth above.

At the conclusion of the representation, should the Estate desire a copy of those portions of the file that are considered the client's, please let us know and we will have a copy made for you at your expense. Otherwise, Calihan Law PLLC retains the files for a period of seven years running from the conclusion of the representation at which time the files are destroyed unless you notify us to the contrary in writing.

The Appellate Divisions of the State of New York have enacted a Statement of Client's Rights, a copy of which is attached hereto. Also attached is a copy of the Statement of Client's Responsibilities that was promulgated at the same time. If you have any question about the content of either of these documents, please let me know.

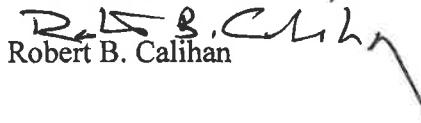
In the event a dispute arises between us relating to our fees, you may have the right to arbitrate the dispute under Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to you upon request.

Our representation of the Estate will continue through the conclusion of the Action or until otherwise agreed in writing.

This agreement is a binding contract. As a result, if any of the information in this letter is not consistent with your understanding of our agreement, please contact me before signing this agreement. Otherwise, please sign the agreement and return it to me along with the initial \$10,000 retainer.

If you have any questions, please feel free to contact me.

Very truly yours,

  
Robert B. Calihan

I have read this letter and consent to the terms of this agreement.

By:

  
Patrick D. Martin, as Executor for Estate of  
Elliot W. Gumaer

Date: 4/23/18